

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

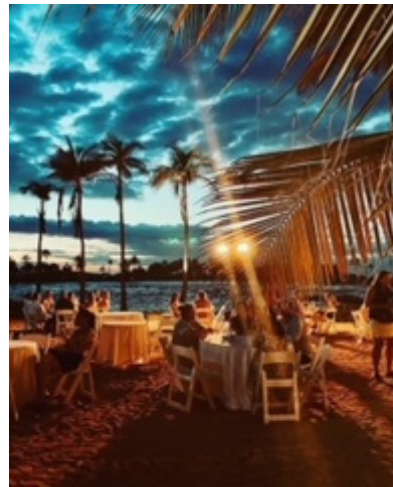
GARN-ST GERMAINE ACT: WHAT IT IS AND HOW IT MAY BE RELEVANT TO YOU.

You are probably familiar with mortgage 'due-on-sale' clauses. If a mortgage contains this clause, a sale or partial sale of the mortgaged property may require the mortgage or other loan to be paid off in full.

The Garn-St Germain Depository Institutions Act, signed into law by President Ronald Reagan on October 15, 1982...

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BETH'S PUERTO RICO REPORT



Three weeks ago, I (Beth) returned from the National Academy of Elder Law Attorneys (NAELA) annual conference in San Juan, Puerto Rico. It was great opportunity to catch up with colleagues and connect with new ones.

Popular sessions included Affordable Housing Issues, Dementia and Our Clients' Capacity, Cyber Liability, The SECURE Act, and Elder Law and Disability Planning.

Due to my commitments as part of the conference planning committee, I did not get to attend all these sessions (I promise I was 'working' the entire time and not playing hooky at the pool). I am thankful that those sessions will be made available in a virtual format so that I can watch the ones I had to miss.

When not in a conference room, I was comparing notes with colleagues or walking around old San Juan to take in the murals, colorful buildings, and mosaics. In short, my trip went by way too quickly and I feel fortunate to have been a part of it.

MAKING GUARDIANSHIPS AND CONSERVATORSHIPS RUN MORE SMOOTHLY AND LESS EXPENSIVELY



On January 1, 2022, the adult guardianship laws changed in our state, bringing with it new document and notice requirements. An adult guardianship occurs when an adult needs assistance with...

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... introduced adjustable-rate mortgages, removed interest limits on banks and savings and loans, affirmed that due-on-sale clauses are legal, and provided several exceptions for a due-on-sale clause. Here are defined situations in which a due-on-sale clause cannot be enforced:

- Creation of a second mortgage
- Purchase money liens for household appliances
- Termination of joint tenancies (where all joint tenants, but one, die or assign his or her interest to one remain tenant/owner)
- Leases of less than three years
- A transfer to a relative resulting from the death of a borrower and the relative uses the residence as his or her primary residence (note: the act does not define 'relative;' thus, nieces, nephews, or a stepchild are likely covered, but it is not clear)
- Divorce or legal separation settlements or court orders
- Transfers into an inter vivos trust (most commonly, a revocable living trust), if the borrower is a beneficiary of the trust
- Transfers approved by the relevant federal agency

Note that the exceptions apply only to residential properties; however, a five-unit apartment or less would still qualify as residential property if a unit was occupied by the borrower.

It is helpful to know that inheritance of a house by a relative does not require the relative to refinance the property. The relative can continue to make payments on the existing mortgage.

Obviously, the relative should have the means to make the payments on time and in full along with the ability to pay other obligations associated with the property, such as insurance and property taxes. In this situation, it is optimal for the relative to have good credit should he or she wish to secure a better interest rate or more favorable terms than the original mortgage.

Should you intend for a relative to inherit your residence and assume your mortgage, unless the relative is your only child, you need to make this intention known in your will or trust. Upon your death, your acting trustee or court-appointed personal representative should familiarize themselves with the terms of your mortgage.

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They should contact the mortgage company and request any mortgage assumption forms the company requires. Consider too that if there are other heirs who have an equal interest in the

residence, the relative needs to have the means to pay the other heirs for their interest in the residence. Sometimes this can be done with other inherited assets, but not always.

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... housing and medical decisions and there is no suitable less restrictive alternative like a Durable Power of Attorney for Healthcare Decisions. An adult conservatorship occurs when an adult needs assistance with finances and there is no suitable less restrictive alternative like a Durable Power of Attorney.

It is common for parents of a developmentally disabled child to petition for guardianship/conservatorship when the child turns 18. Other situations in which an adult guardianship/conservatorship may be required include:

- When an adult becomes incapacitated prior to executing a Durable Power of Attorney.
- When the adult has a Durable Power of Attorney, but the agent refuses to act, acts inappropriately, or dies and there is no alternate agent named.

- Where there are 'dueling Durable Powers of Attorney' in which, for example, a parent has named different children who do not get along or have different ideas regarding what is in the parent's best interest.
- To protect an individual from reoccurring financial exploitation or the individual's lack of judgment due to neurological impairment like dementia.

Due to our needing to keep our over 90 current guardian and conservator clients up to date with the requirements of the new guardianship laws, our office is currently not taking new guardianship/conservatorship cases. If you or someone you know is contemplating guardianship or conservatorship, please contact our office for an attorney referral list.

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It is important to know that an adult guardianship/conservatorship matter is subject to ongoing court review, typically annual or triennial, for the duration of the incapacity, the individual's lifetime, or the individual's execution of a Durable Power of Attorney (if possible), whichever is the shortest. If the individual's only source of income is needs-based Social Security Income (SSI), we ask the Court to waive the requirement of providing to the court accountings for this income and to instead direct the conservator to attach representative payee reports to the conservator's reports which coincide with the same reporting period.

Also, whenever possible, we ask the Court for a triennial review versus annual review to save the legal fees associated with annual reporting. The downside to a three-year review, however, is they require our guardianship/conservatorship clients to be disciplined with keeping good records. To help our clients with the task, we will implement annual check-in calls with our conservatorship clients to review that year's financial statements and get questions answered regarding any unusual deposits or disbursements.

Here are additional tips to save legal fees in a guardianship/conservatorship:

- Notify the attorney immediately if you or the individual subject to a guardianship/conservatorship relocates as a Notice of Change of Circumstances needs to be filed within 30 days of such a move.
- Likewise, notify the attorney immediately if the individual subject to a guardianship/conservatorship dies as, per state law, a guardianship/conservatorship final report needs to be filed with the court and submitted for approval within 90 days of the death.
- If the individual receives SSI, arrange for those funds to be deposited to a separate representative payee account. Any other income received should be deposited to a separate account from the SSI.
- Save in a file each financial statement as soon as it becomes available or is received; immediately review the statement and make note of any unusual expenditures or deposits.
- Avoid electronic transfers between the individual subject to a conservatorship's account and ...

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- ... your own account. Without fail, the purposes of transfers become forgotten and impossible to account for. An exception would be a monthly transfer from the individual's account to the conservator's account for rent.
- Provide information needed to prepare accountings and reports when requested by the law office, as delays often require requesting orders to give additional time to file the report. Presenting such an order incurs more fees and costs.
- Guardianship and Conservatorship clients should do their best to respond to e-mails and calls in a timely manner; otherwise, more legal fees will be incurred when follow-up emails and calls are required.
- If you do not live with the individual and you are their guardian, know that the Court requires you to keep a log of all your visits with the individual. Thus, please keep such a log if you have not been doing so already.

Also consider that, under the new statute, the individual subject to the guardianship/conservatorship now needs to be given notice of the filing of the report. This requires a mailing to the individual and giving the individual two weeks to object before the guardianship/conservatorship report can be submitted to the Court for approval. As letters of guardianship/conservatorship now expire in 120 days versus 150 days, there is a shorter window in which the report can be presented for approval prior to the letters expiring.

In short, adult guardianship/conservatorship can be costly and complicated. It is best to do everything to avoid it or mitigate it by having a proper Durable Power of Attorney or Trust when possible. If a guardianship/conservatorship is necessary, the guardian-conservator and attorney need to work as a team so that the filings are timely, and the costs are minimized.